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**Intel Corporation**  
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Chantilly, VA 20151**MAY 26 2006****FAX**

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***Urgent and Confidential***

Date: May 26, 2006

**TO:** **USPTO**  
Examiner R. Hoffberg  
Art Unit 2835  
Fax Number 571-273-8300

**FROM:** **Alan Pedersen-Giles**  
Fax Number 703-633-3303  
Phone Number 703-633-1061

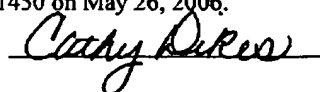
**SUBJECT:** Application Number 10/772,603  
Inventor(s) Robin STEINBRECHER  
Date Filed February 4, 2004  
Docket Number 42.P18546  
Title Airflow Gates for Electronic Devices

**INCLUDED IN THIS TRANSMISSION:**

Fax Cover Sheet	1 page
Transmittal	1 page
Petition	8 pages

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Cathy Dikes

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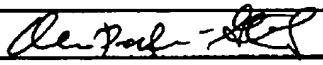
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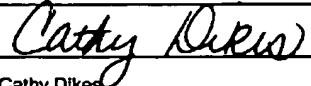
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<b>TRANSMITTAL FORM</b>  (to be used for all correspondence after initial filing)	Application Number	10/772,603	
	Filing Date	February 4, 2004	
	First Named Inventor	Robin STEINBRECHER	
	Art Unit	2835	
	Examiner Name	R. Hoffberg	
Total Number of Pages in This Submission	10	Attorney Docket Number	42.P18546

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SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT			
Firm Name	Intel Americas		
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Printed name	Alan Pedersen-Giles		
Date	May 26, 2006	Reg. No.	39,996

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PATENT  
Docket No. 42.P18546

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of )  
 )  
Robin STEINBRECHER ) Group Art Unit: 2835  
 )  
Application No.: 10/772,603 (Pub. # US 2005/0168942) ) Examiner: R. Hoffberg  
 )  
Filed: February 4, 2004 )  
 )  
For: AIRFLOW GATES FOR )  
ELECTRONIC DEVICES )  
 )

*37 C.F.R. §§ 1.144 and 1.181 PETITION*

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

In response to the Office Actions dated May 17, 2006, and December 19, 2005, which made Final the Restriction Requirement mailed October 19, 2005, Applicant hereby petitions the Director under 37 C.F.R. §§ 1.144 and 1.181.

In particular, Applicant respectfully invokes the supervisory authority of the Director to review the Examiner's Restriction Requirement, for the reasons outlined below. Applicant previously requested reconsideration of the Restriction Requirement in the Response filed November 16, 2005.

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By: <u>Cathy Dikes</u> Cathy Dikes	Date: <u>May 26, 2006</u>

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## **REMARKS**

In the Restriction Requirement, the Examiner required restriction among the following groups of claims:

- I. Claims 1-6.
- II. Claims 7-13 and 21-24.
- III. Claims 14-20.

Applicant elected Group II with traverse, and the Examiner withdrew the remaining claims, 1-6 and 14-20.

M.P.E.P. § 803 states that for a restriction to be proper: “(A) The inventions must be independent . . . or distinct as claimed . . . ; and (B) There must be a serious burden on the examiner if restriction is required.”

### **A. Groups not independent or distinct:**

It readily apparent that paragraphs 0009 to 0038 and Figs. 1A-4 of the published application describe the same essential characteristics of a single embodiment of the invention. That Applicant has chosen to claim this one embodiment in different ways does not create independent or distinct inventions. See M.P.E.P. § 806.03 (“Where the claims of an application define the same essential characteristics of a single disclosed embodiment of an invention, restriction therebetween should never be required. This is because the claims are but different definitions of the same disclosed subject matter . . .”). Hence the claims cannot be patentably distinct, because they define the same essential characteristics of the single disclosed embodiment. The requirement should be withdrawn for at least this reason.

#### **1. Examiner’s response:**

Neither of the Office Actions dated May 17, 2006 and December 19, 2005, respond to the above traversal.

#### **2. Applicant’s reply:**

The Examiner has not identified multiple embodiments in the application. The Director should interpret this point as conceded by the Examiner by his silence in the two Office Actions since Applicant’s traversal above.

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Although M.P.E.P. § 806.03 forecloses restriction as explained above, in an effort to be fully responsive Applicant will address the allegations on pages 2 and 3 of the Office Action mailed October 19, 2005.

On page 2, the Office Action mailed October 19, 2005 alleges that Group II is a combination and that Group I is a subcombination. This portion of the Office Action also alleges that the “combination as claimed does not require the particulars of the subcombination as claimed at least in part because Group II does not provide a control signal and an actuator.”

To the contrary, claim 7 in Group II, which is alleged to be the combination, requires “a first airflow gate able to reduce airflow to the first power supply when a failure of the first power supply is detected.” This at least implicitly requires both the actuator and control signal pointed to on page 2 of the Office Action. Claim 7 implicitly requires the actuator so that the claimed first airflow gate is “able to reduce airflow;” if there were no actuator, the first airflow gate would not be “able” as claimed. Similarly, some sort of control or triggering signal must implicitly be present to meet the “when a failure of the first power supply is detected” limitation of claim 7. That these actuator and control signal elements of Group I are not explicitly recited in claim 7 of Group II makes them no less “required” (under M.P.E.P. § 806.05(c)) by the claim language of Group II. Thus, the two-way test for combination-subcombination distinctness fails for Groups I and II. The requirement should be withdrawn for this additional reason.

3. Examiner’s response:

Neither of the Office Actions dated May 17, 2006 and December 19, 2005, respond to the above traversal.

4. Applicant’s reply:

Groups I and II are not independent or distinct. The Director should interpret this point as conceded by the Examiner by his silence in the two Office Actions since Applicant’s traversal above.

On page 3, the Office Action mailed October 19, 2005 alleges that Group III is a process of use, and that Group II is a product for its practice. This portion of the Office Action also

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alleges that the method of Group III can be used to control “*other types* of products; for example products with *other types* of restrictors that are *not air flow gates*” (emphasis added).

This assertion is spurious, because it provides no evidence. It merely takes the claim language of Group III (e.g., “restrictor,” corresponding to “restricting airflow” in claim 14) and alleges that it can be performed by some “other types” of devices that are the logical opposite of the claim language of Group II (i.e., “not” the “airflow gate” of claim 7). Such a bare conclusion based solely on a logical negation of the claim language of Group II does not provide the evidence required by M.P.E.P. § 806.05(e) (“The burden is on the examiner to provide reasonable examples that recite material differences.”). The above “other types of restrictors that are not air flow gates” is demonstrably not a “reasonable example” nor a “material difference.”

Nor is Applicant convinced that a “material difference” even exists between something “restricting airflow” as recited in Group III and an “airflow gate” as recited in Group II. The Director is respectfully referred to paragraph 0019 of Applicant’s specification, which provides:

[0019] It should be noted that the structure and operation of airflow gate 130 may differ from that shown in Figs. 1A-1D. For example, airflow gate 130 may include an iris-type opening that is able to be opened and closed by actuator 120. Other possible implementations may include a “window shade” or door-type structure that pivots to open and close an airflow path. Further, in some implementations, airflow gate 130 may reduce, but not completely prevent, airflow to an adjacent component. *The claimed invention is generally not limited with regard to a specific implementation or implementations of airflow gate 130.*

(emphasis added). Thus, the proof required by M.P.E.P. § 806.05(e) is not present in the Office Action mailed October 19, 2005, and likely cannot be provided. The requirement should be withdrawn for this additional reason.

5. Examiner’s response:

Neither of the Office Actions dated May 17, 2006 and December 19, 2005, respond to the above traversal.

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**6. Applicant's reply:**

Groups II and III are not independent or distinct. The Director should interpret this point as conceded by the Examiner by his silence in the two Office Actions since Applicant's traversal above.

Because Groups I-III are not independent or distinct, all pending claims in Groups I-III (i.e., claims 1-24) should be examined together.

**B. No serious burden:**

Addressing the second requirement for a proper restriction, the facts and circumstances all indicate that there is no "serious burden" in examining all of claims 1-24, even if the inventions were independent or distinct as claimed. On page 2 of the Office Action, only Group I is correctly classified in class 165 ("Heat Exchange" from the Manual of Classification) and/or class 454 ("Ventilation" from the Manual of Classification)<sup>1</sup>. The remaining Groups II and III are incorrectly classified outside of class 165 and/or class 454, where they properly belong with the claims of Group I.

**1. Examiner's response:**

The Office Actions dated May 17, 2006 and December 19, 2005, respond to the above traversal by alleging that "neither of these classes [165 and/or 454] provide for the structural elements of an actuator or a control system for responding [to] a change in the system operating condition."

**2. Applicant's reply:**

Whatever classification is appropriate for Group I, be it classes 165 and/or 454 or some other class, the same classification is equally appropriate for Groups II and III. Applicant respectfully submits that the Examiner separately classifies groups I-III solely because of a desire to restrict 24 claims into three groups, and not because these groups of claims are, in fact, in separate arts.

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<sup>1</sup> Class 257, "Active Solid-State Devices (e.g., Transistors, Solid-State Diodes)," does not appear to be a correct classification for Group I.

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Group II is misclassified into class 361, subclasses 694 and 695. From the Manual of Classification, these subclasses are indented under subclass 679 ("For electronic systems and devices: . . . Subject matter comprising  *housings or mounting assemblies* specifically for electronic systems and devices not provided for elsewhere.") (emphasis added), which in turn is indented under subclass 600 ("HOUSING OR MOUNTING ASSEMBLIES WITH DIVERSE ELECTRICAL COMPONENTS: . . . Subject matter comprising (a)  *housings, boxes, panels, or mounting arrangements* with an electrical device, multiple electrical devices, or diverse electrical components or (b)  *housing or mounting arrangements* with keyboards, CRTs, disk drive units, displays, or computer related equipment which inherently have diverse electrical components.") (emphasis added). None of claims 7-13 and 21-24 in Group II recites a housing or mounting assembly. Hence, Group II is not properly classified in class 361, subclasses 694 and 695.

3. Examiner's response:

The Office Action dated May 17, 2006, on page 7, responds to the above traversal by alleging that "applicant claims . . . a system which needs to be contained in a housing in order to control the airflow as claimed by applicant."

4. Applicant's reply:

Claims 7-13 and 21-24 in Group II do not recite a housing or mounting assembly, and it is disingenuous to classify these claims in a housing or mounting assembly art. Whatever classification is appropriate for Group II, the same classification is equally appropriate for Groups I and III. Applicant respectfully submits that the Examiner separately classifies groups I-III solely because of a desire to restrict 24 claims into three groups, and not because these groups of claims are, in fact, in separate arts.

Similarly, Group III is misclassified into class 713, subclasses 300+. From the Manual of Classification, subclass 300 relates to "COMPUTER POWER CONTROL: . . . Subject matter including details of steps or means for  *modifying an amount of power used* by a digital data processing system or a system response to available power. (1) This subclass includes power reduction, powering-up systems, powering-down systems, etc." (emphasis added). None of

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claims 14-20 in Group III recites modifying an amount of power used, powering-up, or powering-down. Thus, Group III is not properly classified in class 713, subclasses 300+.

5. Examiner's response:

The Office Action dated May 17, 2006, on page 7, responds to the above traversal by alleging that "applicant's [sic] claims a powering down (deactivation) including 'means for modifying an amount of power used by the digital data processing system.'"

6. Applicant's reply:

Claims 14-20 (Group III) are directed to a method, and the above-quoted means do not appear in the claims, and are thus irrelevant. Whatever classification is appropriate for Group III, the same classification is equally appropriate for Groups I and II. Applicant respectfully submits that the Examiner separately classifies groups I-III solely because of a desire to restrict 24 claims into three groups, and not because these groups of claims are, in fact, in separate arts.

As explained above, Groups I-III are properly classified in a common area. Because "the classification is the same and the field of search is the same and there is no clear indication of separate future classification and field of search" (M.P.E.P. § 808.02), restriction is not proper among Groups I-III. The requirement should be withdrawn for at least this reason.

Conclusion:

There is no "serious burden" to examine the claims of Groups I-III, for which Applicant has paid. Nor are these Groups I-III independent or distinct. Accordingly, Applicant respectfully requests under 37 C.F.R. §§ 1.144 and 1.181 that the Director instruct the Examiner to withdraw the Requirement for Restriction and to examine withdrawn claims 1-6 and 14-20.

Fees:

Because neither 37 C.F.R. § 1.144 nor 37 C.F.R. § 1.17 specifies a petition fee for petitions under 37 C.F.R. § 1.181, Applicant assumes that no fee is due for this petition. To the extent that a petition fee is in fact necessary, please charge any shortage in fees due in connection with the filing of this paper (e.g., such petition fee), including extension of time fees, to Deposit

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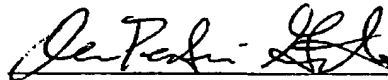
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Account No. 50-0221 and please credit any excess fees to such deposit account.

Respectfully submitted,

Dated: May 26, 2006



Alan Pedersen-Giles

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